IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2371 OF 2005

Nitin Gordanbhai Thakker & Ors. ... Petitioners
Vs.
The Municipal Corporation of
Greater Mumbai and Ors. ... Respondents

Mr. S.H. Doctor for Petitioner.
Mrs. Puranik for Municipal Corporation.
Mr. K.R. Belosey, Government Pleader for State.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: OCTOBER 07, 2006

P.C.:

. Rule. Heard forthwith.

. The first grievance of the Petitioner is that the notice issued in respect of the structure under Section 354(A) of the M.M.C. Act, is without the authority of law. Admittedly the structures in respect of which notice is given was constructed without permission from the Respondent Corporation. It is the contention of the Petitioner that they have so done for the sake of safety in view of the directions by the police. That by itself can be no ground for the Petitioner to put up a structure without the permission of the Corporation. However, considering the facts and circumstances, it will be open to the Petitioner to apply to the Corporation for regularization of the structures and thereafter act according to decision taken by the Respondent Corporation. The application will be moved within four weeks from today. The concerned Officer of the

Corporation to decide the same within eight weeks thereafter. In the meantime, and untill said decision and communication thereof, respondent not to take steps against the said structure. Needless to say that if the Petitioner aggrieved by the decision of the competent Officer i.e. Asst. Engineer, "D" Ward, they are entitled to take steps to which they are entitled to in law.

2. In so far as the grievance about the structures existing outside the trust property, the Corporation contends that with reference to Para 1 of the letter dated 1.10.2005 that the Structure is an old structure. In our opinion, before arriving at that conclusion, the Petitioner herein ought to have been given an opportunity to point out their case. In the light of that, the concerned officer to give notice to the Petitioner and hear them as also the structure holder and thereafter pass appropriate orders according to law but not latter than eight weeks from today.

. In so far as other grievances are concerned, it is for the Petitioner to take out appropriate proceedings including in the civil court for whatever reliefs that may be entitled to. With the above observations, Rule made partly absolute. No order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**